



Ohio Revised Code

Section 3923.38 Continuing policy upon termination of employment.

Effective: April 1, 2009

Legislation: House Bill 2 - 128th General Assembly

(A) As used in this section:

(1) "Group policy" includes any group sickness and accident policy or contract delivered, issued for delivery, or renewed in this state on or after June 28, 1984, and any private or public employer self-insurance plan or other plan that provides, or provides payment for, health care benefits for employees resident in this state other than through an insurer or health insuring corporation, to which both of the following apply:

(a) The policy insures employees for hospital, surgical, or major medical insurance on an expense incurred or service basis, other than for specified diseases or for accidental injuries only.

(b) The policy is in effect and covers an eligible employee at the time the employee's employment is terminated.

(2) "Eligible employee" includes only an employee to whom all of the following apply:

(a) The employee has been continuously insured under a group policy or under the policy and any prior similar group coverage replaced by the policy, during the entire three-month period preceding the termination of the employee's employment.

(b) The employee did not voluntarily terminate the employee's employment and the termination of employment is not a result of any gross misconduct on the part of the employee.

(c) The employee is not, and does not become, covered by or eligible for coverage by medicare under Title XVIII of the Social Security Act, as amended.

(d) The employee is not, and does not become, covered by or eligible for coverage by any other insured or uninsured arrangement that provides hospital, surgical, or medical coverage for



individuals in a group and under which the person was not covered immediately prior to such termination. A person eligible for continuation of coverage under this section, who is also eligible for coverage under section 3923.123 of the Revised Code, may elect either coverage, but not both. A person who elects continuation of coverage may elect any coverage available under section 3923.123 of the Revised Code upon the termination of the continuation of coverage.

(3) "Group rate" means, in the case of an employer self-insurance or other health benefits plan, the average monthly cost per employee, over a period of at least twelve months, of the operation of the plan that would represent a group insurance rate if the same coverage had been provided under a group sickness and accident insurance policy.

(B) A group policy shall provide that any eligible employee may continue the employee's hospital, surgical, and medical insurance under the policy, for the employee and the employee's eligible dependents, for a period of twelve months after the date that the insurance coverage would otherwise terminate by reason of the termination of the employee's employment. Each certificate of coverage, or other notice of coverage, issued to employees under the policy shall include a notice of the employee's privilege of continuation.

(C) All of the following apply to the continuation of coverage required under division (B) of this section:

(1) Continuation need not include dental, vision care, or any other benefits provided under the policy in addition to its hospital, surgical, or major medical benefits.

(2) The employer shall notify the employee of the right of continuation at the time the employer notifies the employee of the termination of employment. The notice shall inform the employee of the amount of contribution required by the employer under division (C)(4) of this section.

(3) The employee shall file a written election of continuation with the employer and pay the employer the first contribution required under division (C)(4) of this section. The request and payment must be received by the employer no later than the earlier of any of the following dates:

(a) Thirty-one days after the date on which the employee's coverage would otherwise terminate;



(b) Ten days after the date on which the employee's coverage would otherwise terminate, if the employer has notified the employee of the right of continuation prior to such date;

(c) Ten days after the employer notifies the employee of the right of continuation, if the notice is given after the date on which the employee's coverage would otherwise terminate.

(4) The employee must pay to the employer, on a monthly basis, in advance, the amount of contribution required by the employer. The amount required shall not exceed the group rate for the insurance being continued under the policy on the due date of each payment.

(5) The employee's privilege to continue coverage and the coverage under any continuation ceases if any of the following occurs:

(a) The employee ceases to be an eligible employee under division (A)(2)(c) or (d) of this section;

(b) A period of twelve months expires after the date that the employee's insurance under the policy would otherwise have terminated because of the termination of employment;

(c) The employee fails to make a timely payment of a required contribution, in which event the coverage shall cease at the end of the coverage for which contributions were made;

(d) The policy is terminated, or the employer terminates participation under the policy, unless the employer replaces the coverage by similar coverage under another group policy or other group health arrangement.

If the employer replaces the policy with similar group health coverage, all of the following apply:

(i) The member shall be covered under the replacement coverage, for the balance of the period that the member would have remained covered under the terminated coverage if it had not been terminated.

(ii) The minimum level of benefits under the replacement coverage shall be the applicable level of



benefits of the policy replaced reduced by any benefits payable under the policy replaced.

(iii) The policy replaced shall continue to provide benefits to the extent of its accrued liabilities and extensions of benefits as if the replacement had not occurred.

(D) This section does not apply to an employer's self-insurance plan if federal law supersedes, preempts, prohibits, or otherwise precludes its application to such plans.

(E) An employer shall notify the insurer if the employee elects continuation of coverage under this section. The insurer may require the employer to provide documentation if the employee elects continuation of coverage and is seeking premium assistance for the continuation of coverage under the "American Recovery and Investment Act of 2009," Pub. L. No. 111-5, 123 Stat. 115. The director of insurance shall publish guidance for employers and insurers regarding the contents of such documentation.